



GUAM MEMORIAL HOSPITAL AUTHORITY

ATURIDAT ESPETAT MIMURIAT GUAHAN

850 Governor Carlos Camacho Road, Tamuning, Guam 96913
Operator: (671) 647-2330 or 2552 | Fax: (671) 649-5508



TO: Central Files

FR: Justine Camacho
Acting, Administrative Officer

DATE: May 7, 2021

SUBJ: RCM Agreement (Ref: GMHA RFP 003-2020)

Jessica Cruz

RCMD AT CENTRAL FILE
MAY 7 '21 PM 3:17


Enclosed is one (1) each original of the Agreement for Revenue Cycle Management between Medhealth Solutions and GMHA for Governor Leon Guerrero's review and approval.


Please acknowledge receipt of this transmittal.

By:


Justine Camacho
Acting, Administrative Officer
Justine.camacho@gmha.org

Received by:



Printed Name


Signature

Date: 05/07/21
2021-13644

OFFICE OF THE GOVERNOR
GOVERNOR'S CHAMBER



DATE: 5-11-21
TIME: 10:41am
RECEIVED BY: DB
GC2021-910

AGREEMENT FOR

REVENUE CYCLE MANAGEMENT SERVICES

BETWEEN

MEDHEALTH SOLUTIONS

AND

GUAM MEMORIAL HOSPITAL AUTHORITY (GMHA)

Contract for: Revenue Cycle Management Services
Project No: GMHA RFP No. 003-2020

THIS AGREEMENT FOR REVENUE CYCLE MANAGEMENT SERVICES ("Agreement") is entered by and between the GUAM MEMORIAL HOSPITAL AUTHORITY ("GMHA"), a public corporation and autonomous instrumentality of the Government of Guam, whose mailing address is 850 Governor Carlos G. Camacho Rd., Tamuning, Guam, 96913, and MedHealth Solutions, ("CONTRACTOR") *incorporated or organized* under the laws of Guam, whose address is P.O. Box 505641, Saipan, MP 96950.

WHEREAS, the GMHA operates Guam's only public hospital known as the Guam Memorial Hospital ("GMH" or "Hospital") in Tamuning, Guam, and Skilled Nursing Facility ("SNF") in Barrigada, Guam; and

WHEREAS, the GMHA issued a Request for Proposal ("RFP") GMHA RFP 003-2020 soliciting Revenue Cycle Management ("RCM") services; and

WHEREAS, the GMHA selected a contingency based contract for RFP No. 003-2020 for Revenue Cycle Management Services considering the nature of the services to be procured, the uncertainties which may be involved in contract performance, and the extent to which the territory or the contractor is to assume the risk of the cost of performance of the contract, as provided under Section 3119(c)(1). The GMHA's objective when selecting this contract type is to obtain the best value in needed services in the time required and at the lowest cost or price to territory; and

WHEREAS, CONTRACTOR has submitted a statement of qualifications and an interest in providing such RCM services; and

WHEREAS, the award of this contract has been made pursuant to GMHA's procurement rules and regulations, the laws of Guam, and a finding by the Hospital Administrator/CEO that CONTRACTOR is the best qualified based upon evaluation factors set forth, and that negotiations of compensation have been determined to be fair and reasonable; and

NOW THEREFORE, GMHA and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 CONTRACT DOCUMENTS

It is hereby mutually agreed that the following list of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made part hereof, and collectively evidence and constitute this Agreement between the parties hereto, and they are as fully a part of this Agreement, as if they were set out verbatim and in full herein:

- a. The Request for Proposal, GMHA RFP 003-2020
- b. Any addendum(s) to GMHA RFP 003-2020
- c. CONTRACTOR's proposal in response to GMHA RFP 003-2020; and
- d. This Agreement and any Amendment thereto.

SECTION 2 CONTRACT TERM

A. Contract Term. Subject to the termination clause of this Agreement, the Contract shall be for a period of one (1) year from the initial contract approval date which is the date all approving signatures required by Guam law are affixed (the "Initial Term").

B. Renewal Terms. This Contract may be renewed, at the sole discretion of the Hospital, for two (2) additional one (1) year terms (each a "Renewal Term"), subject to the appropriation and availability of funds thereafter.

SECTION 3 CONTRACT TYPE

This is a multi-term Contingency Fee contract. All prices under this Agreement shall be in the currency of United States dollars.

SECTION 4 SCOPE OF SERVICES

CONTRACTOR shall provide administrative functions that contribute to the capture, management, and collection of patient service revenue in accordance with the Healthcare Financial Management Association (HFMA). In addition to overseeing GMHA's RCM and recommending appropriate RCM structure, CONTRACTOR will provide guidance and training to GMHA staff until such time that GMHA's capabilities are mature enough to manage its RCM. CONTRACTOR functions shall also include:

1. Charge Capture: Rendering patient services into billable charges
2. Claim Submission: Timely filing of claims of billable fees to insurance companies
3. Coding: Appropriate coding diagnoses and procedures
4. Patient Collections: Determining self-pay balances and collecting payments
5. Preregistration: Collecting preregistration information before patient arrives for scheduled inpatient or outpatient procedures
6. Registration: Collecting subsequent patient information during registration to establish a Medical Record Number and meet various regulatory, financial and clinical requirements
7. Remittance Processing: Applying or rejecting payments through remittance processing
8. Third-Party Follow-Up: Collecting payments from third-party insurers.
9. Medicare Cost Reporting
10. Update and Maintenance of GMHA Charge Master

SECTION 5 COMPENSATION

A. Compensation. GMHA agrees to compensate CONTRACTOR twelve percent (12%) of any dollar collected, not charged (actual monies collected) in a given month that are above GMHA's estimated monthly collection rate of \$7,200,000. CONTRACTOR will also be compensated thirty

percent (30%) of any dollars collected for any unbilled, uncollected or denied claims that GMHA refers to CONTRACTOR and for which CONTRACTOR obtains payment on behalf of the GMHA.

B. Invoices. CONTRACTOR shall submit a monthly invoice recording the description of services provided. Payment for services rendered will be made within thirty (30) days of receipt of a monthly invoice provided by CONTRACTOR to GMHA, or as otherwise agreed to by the parties.

SECTION 6 STANDARD PRICE ADJUSTMENT CLAUSE

A. Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this Agreement shall be made in one or more of the following ways:

- 1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- 2) by unit prices specified in the Proposal, Agreement, or subsequently agreed upon;
- 3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
- 4) in such other manner as the parties may mutually agree; or
- 5) in the absence of an agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Law.

B. Submission of Cost or Pricing Data. The Contractor shall submit cost or pricing data for any price adjustments subject to the provision of Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations. GMHA may require the Contractor to provide invoices, paid bills, or any other proof it deems appropriate to determine compliance with this provision.

C. Price Adjustment for Inaccurate Cost or Pricing Data. Any Change Order, amendment, or modification to this Agreement which increases the price of the Agreement shall be adjusted to exclude any significant sums by which BSP finds that such price was increased because the contractor- furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the Parties. The price shall also be adjusted to reflect the nonpayment by the Contractor of any taxes which would have been paid by the Contractor were it not for the exclusion provided by 11 GCA § 26203(k) (14) (Business Privilege Tax). Adjustments shall conform to the Defective Cost or Pricing Data Clause of this Agreement.

SECTION 7 EMPLOYEE BENEFITS, TAXES, AND INSURANCE

Contractor agrees there shall be no government of Guam employee benefits accruing to Contractor under this Agreement, including, but not limited to:

- (a) Insurance coverage provided by the GMHA;
- (b) Participation in the government of Guam retirement system
- (c) Accumulation of vacation leave or sick leave; and
- (d) Workers Compensation coverage.

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing Services for GMHA, and are not employees of either GMHA or the government of Guam. The Contractor and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to government of Guam employees as a result of this Agreement. Contractor agrees that Contractor and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of GMHA at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Contractor and GMHA a relationship of partnership, agency, association, joint venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by GMHA for the Contractor.

B. Tax and Withholding Liability. The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments or tax payments required by the governments of the United States and Guam. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes or business privilege taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement, unless Contractor is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to five percent (5%) of the total dollar value of this Agreement will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).

C. Insurance. Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Workman's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Contractor agrees to hold harmless and indemnify GMHA, its officers, directors, employees, agents, representatives, successors and assigns, for any

and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to: (i) any injury, death, or property damage arising from the negligence or other wrongful or tortious acts of Contractor or Contractor's employees, officers, contractors, directors, agents, representatives, successors, or assigns; or (ii) Contractor's failure to comply with terms of this subparagraph B.

D. Wage and Benefits Compliance. Contractor warrants it shall comply with all applicable federal and local laws, rules, and regulations regarding the payment of minimum wages and benefits, in particular in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor and with Guam Public Law 26-111. Contractor guarantees health and similar benefits for its employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, as required by any applicable law. Contractor further guarantees a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law. Contractor assumes all liability for, and hereby indemnifies BSP GCMP from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits. In addition, this Agreement contains extension and/or renewal clauses. Therefore, at the time of any extension or renewal adjustments, there shall be a stipulation contained in the extension or renewal document stating that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the extension or renewal date shall apply, as required by any applicable law. Any renewal or extension to which this provision applies shall also contain provisions mandating health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law.

SECTION 8 SCOPE OF AGREEMENT

This Agreement supersedes any and all prior agreements, either oral or in writing, if any, between the parties hereto and contains all of the covenants and agreements between the parties with respect to such agreement in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

This Agreement and any modification hereto, is not binding until approved by the Attorney General of Guam and executed by the Governor of Guam. Any modification of this Agreement will be effective only if it is in writing, approved by the Attorney General of Guam and executed by the Governor of Guam. Notwithstanding the foregoing, the approval of the Attorney General of Guam and execution by the Governor of Guam will not be required for notices of termination.

SECTION 9 AVAILABILITY OF FUNDS

This Agreement is contingent upon the availability of certified governmental funds. Funds are available for the first fiscal period of this Agreement. The source of the funds for this Agreement

is Government Funds. In the event that funds are not available for any succeeding fiscal period, the remainder of this Agreement shall be cancelled; however, this does not affect either Party's right to terminate under the termination clauses of the contract. If the Agreement is cancelled for insufficient funds, the awarded Contractor shall be reimbursed the reasonable value of any nonrecurring costs reasonably incurred but not amortized in the price of the supplies delivered or services performed under the Agreement. The Procurement Officer will notify the Contractor on a timely basis whether the funds are, or are not, available for the continuation of the Agreement for each succeeding fiscal period. GMHA may modify this Agreement based upon the availability of funds in succeeding fiscal periods. In such an event, GMHA shall provide notice to Contractor, and the Parties may attempt to renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, or decide not to attempt renegotiation, then the GMHA shall cancel this Agreement in accordance with the Guam Procurement Regulations. The government of Guam and GMHA shall have no liability under this Agreement to the Contractor or to anyone else beyond the certified funds available for this Agreement.

SECTION 10 ACCESS TO RECORDS AND AUDIT REVIEW

CONTRACTOR, including its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective office at all reasonable times during the contract period and for three (3) years from the date of final payment under this Agreement, for inspection by GMHA. Each subcontract by CONTRACTOR pursuant to this Agreement shall include a provision containing the conditions of this Section.

SECTION 11 RESPONSIBILITY OF THE CONTRACTOR

CONTRACTOR shall be responsible for the professional and technical accuracy of all services and materials furnished under this Agreement. The Contractor shall, without additional cost to GMHA, correct or revise all errors or deficiencies in its performance. Under no circumstance shall CONTRACTOR be responsible for the acts, errors or deficiencies of GMHA's personnel. GMHA's review, approval, acceptance of, and payment of compensation required under this Agreement shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the CONTRACTOR's failure in the performance of this Agreement; and the CONTRACTOR shall be and remain liable to GMHA for all costs of any kind which may be incurred by GMHA as a result of the CONTRACTOR's negligent performance of any work contracted under this Agreement.

SECTION 12 INDEPENDENT AGENT

For the purposes of the Government Claim Act, CONTRACTOR shall not be considered an agent of the GMHA or the Office of the Attorney General with respect to any acts performed by it in connection with the discharge of duties of this Agreement. Contractor contracts herein with the GMHA as an independent contractor and is neither an employee nor an agent of the GMHA for the purpose of performing the services hereunder.

SECTION 13 TERMINATION

A. Termination for Default, Nonperformance or Delay, Damages for Delay, Time Extensions.

1. **Default.** If CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, GMHA may notify CONTRACTOR in writing of the delay or on-performance and if not cured in ten (10) days or any longer time specified in writing by GMHA, GMHA may terminate CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part GMHA may procure similar supplies or services in a manner and upon terms deemed appropriate by GMHA. CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

2. **CONTRACTOR's Duties.** Notwithstanding termination of the contract and subject to any directions from the GMHA, CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of CONTRACTOR in which GMHA and the Territory of Guam has an interest.

3. **Compensation.** Payment for completed services delivered and accepted by GMHA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by CONTRACTOR and the GMHA; if the parties fail to agree, GMHA shall set an amount subject to CONTRACTOR's rights under Article 9 (Legal and Contractual Remedies) of the Guam Memorial Hospital Authority Procurement Regulations.

4. **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if CONTRACTOR has notified GMHA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the territory and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, CONTRACTOR shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the contract requirements. Upon request of CONTRACTOR, GMHA shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, CONTRACTOR's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the Territory

of Guam under the clause. (As used in this Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

5. **Erroneous Termination for Default.** If, after notice of termination of CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, be the same as if the notice of termination had been issued pursuant to the clause providing for termination for convenience.

6. **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

B. Termination for Convenience

1. GMHA may, when the interest of GMHA so require, terminate this contract in whole or in part, for the convenience of GMHA. GMHA shall give written notice of the termination to CONTRACTOR specifying the part of the contract terminated and when termination becomes effective.

2. CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination CONTRACTOR will stop work to the extent specified. CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

3. Compensation

a. CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 26 GAR, Div. 2 §16319 (Cost or Pricing Data) of the Guam Memorial Hospital Authority Procurement Rules and Regulations bearing on such claim. If CONTRACTOR fails to file a termination claim within one (1) year from the effective date of termination, the GMHA may pay CONTRACTOR, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

b. The GMHA and CONTRACTOR may agree to a settlement provided CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by 26 GAR, Div. 2 §16319 (Cost or Pricing Data) of the Guam Memorial Hospital Authority Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the GMHA, and the contract price of the work not terminated.

c. Absent complete agreement under Subparagraph (2) of this Paragraph, the GMHA shall pay CONTRACTOR the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) that shall be no less than the fees due for the portion of the term calculated up-through the date of termination calculated on a pro-rata basis, less amounts paid or to be paid for accepted services; provided, however, that if it appears that CONTRACTOR would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (b) of this clause. These costs must not include costs paid in accordance with Subparagraph (3)(b) of this Paragraph;
- (iv) the reasonable settlement costs of CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

The total sum to be paid CONTRACTOR under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of CONTRACTOR reduced by the amount of payments otherwise made and the contract price of work not terminated.

d. Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Article 7 (Cost Principles) of the Guam Memorial Hospital Authority Procurement Rules and Regulations.

C. Termination Without Cause

GMHA will reserve the right to terminate the contract without cause with a minimum of thirty (30) days written notice. Termination or cancellation of the contract will not relieve CONTRACTOR of any obligations for any deliverables or obligations entered into prior to the termination of the contract (i.e. reports, statement of accounts, etc. required and not received).

SECTION 14 DISPUTES

A. GMHA and CONTRACTOR agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then CONTRACTOR shall request the government in writing to issue a final decision within sixty (60) days after receipt of the written request. If the government does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties' in writing, then CONTRACTOR may proceed as though the government had issued a decision adverse to CONTRACTOR.

B. GMHA shall immediately furnish a copy of the decision to CONTRACTOR, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

C. GMHA's decision shall be final and conclusive, unless fraudulent or unless CONTRACTOR appeals the decision.

D. This subsection applies to appeals of GMHA's decision on a dispute. For money owed by or to GMHA under this Agreement, CONTRACTOR shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by GMHA or from the date when a decision should have been rendered. For all other claims by or against GMHA arising under this contract, the Office of Public Accountability has jurisdiction over the appeal from the decision of GMHA. Appeals to the Office of Public Accountability must be made within sixty (60) days of GMHA's decision or from the date the decision should have been made.

E. CONTRACTOR shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

F. CONTRACTOR shall comply with GMHA's decision and proceed diligently with performance of the contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the contract, except where CONTRACTOR claims a material breach of the contract by GMHA.

SECTION 15 **CLAIMS BASED UPON GMHA'S ACTIONS OR OMISSIONS**

A. **Notice of Claim.** If any action or omission on the part of the GMHA, requiring performance changes within the scope of the contract constitutes the basis for a claim by CONTRACTOR for additional compensation, damages, or an extension of time for completion, CONTRACTOR shall continue with performance of the contract in compliance with the directions or orders of GMHA, but by so doing, CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) CONTRACTOR shall have given written notice to the GMHA:

(a) prior to the commencement of the work involved, if at that time CONTRACTOR knows of the occurrence of such action or omission;

(b) within thirty (30) days after CONTRACTOR knows of the occurrence of such action or omission, if CONTRACTOR did not have such knowledge prior to the commencement of the work; or

(c) within such further time as may be allowed by the GMHA in writing.

This notice shall state that CONTRACTOR regards the act or omission as a reason which may entitle CONTRACTOR to additional compensation, damages, or an extension of time. The GMHA, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the GMHA.

(1) The notice required by Subparagraph (A) of this Paragraph describes as clearly as practicable at the time the reasons why CONTRACTOR believes that additional

compensation, damages, or an extension of time may be remedies to which CONTRACTOR is entitled; and

(2) CONTRACTOR maintain and, upon request, makes available to the GMHA within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. Limitations of Clause. Nothing herein contained, however, shall excuse CONTRACTOR from compliance with any rules of law precluding any territorial officers and any contractor from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

SECTION 16 REMEDIES

Any dispute arising under or out of this Agreement is subject to the provisions of Article 9 (Legal and Contractual Remedies) of the Guam Memorial Hospital Authority Procurement Rules and Regulations.

SECTION 17 INDEMNIFICATION

To the fullest extent permitted by law CONTRACTOR shall indemnify and hold harmless GMHA, and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

SECTION 18 GOVERNING LAW AND JURISDICTION

Except to the extent United States federal law is applicable, the validity of this contract and of any of its terms or provisions, as well as the rights and duties of the parties to this contract, shall be governed by the laws of Guam. CONTRACTOR hereby expressly consents to the jurisdiction and venue of Guam with respect to any protest or dispute resolution, and the forum of the courts of

Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by Guam Procurement Law. CONTRACTOR waives any and all rights it may otherwise have to contest the same or to proceed with any claims arising by reason of this Agreement in a different jurisdiction, forum, or venue.

SECTION 19 GOVERNMENT NOT LIABLE

A. GMHA assumes no liability for any accident or injury that may occur to CONTRACTOR, its agents, dependents, or personal property while in execution of duties under this contract.

B. GMHA shall not be liable to CONTRACTOR for any services performed by CONTRACTOR prior to the approval of this Agreement by the Hospital Administrator and the CONTRACTOR hereby expressly waives any and all claims for compensation for acts performed in expectation of this contract prior to its approval by the Governor of Guam.

SECTION 20 ASSIGNMENT OF AGREEMENT

It is expressly acknowledged that CONTRACTOR is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not CONTRACTOR utilizes one or more subcontractors for such purpose. The right and interest of CONTRACTOR under this Agreement (including, but not limited to, CONTRACTOR's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of GMHA. In the event of a permissive subcontract or assignment of this Agreement by CONTRACTOR, CONTRACTOR agrees that any subcontractors retained by CONTRACTOR or assignees shall be subject to all provisions of this Agreement.

SECTION 21 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

SECTION 22 ATTORNEY'S FEES PROVISION

If GMHA retains an attorney or attorneys to enforce any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach thereof, or GMHA commences an action for any of the foregoing reasons or to resolve any dispute relating to this Agreement, and GMHA prevails, then GMHA shall be entitled to recover from CONTRACTOR GMHA's reasonable attorney's fees, cost and expenses incurred in connection with any such action. If CONTRACTOR retains an attorney or attorneys regarding this Agreement, any recovery of attorney's fees, costs or expenses from GMHA by CONTRACTOR is limited by and subject to the Government Claims Act and any other applicable law.

SECTION 23 MANDATORY PROHIBITIONS

A. Prohibition of Gratuities, Kickbacks, and Favors.

1. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

2. **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

3. **Favors to the Territory.** It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods."

B. Prohibition of Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

SECTION 24 WARRANTIES BY CONTRACTOR

A. Warranty against Employment of Sex Offenders. CONTRACTOR warrants that: (1) no person providing services on behalf of CONTRACTOR has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing

services on behalf of CONTRACTOR is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said

agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

B. Covenant against Contingent Fees. CONTRACTOR represent that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

C. Representation Regarding Gratuities and Kickbacks. CONTRACTOR represent that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11-206 (Gratuities and Kickbacks) of the Guam Memorial Hospital Authority Procurement Rules and Regulations. CONTRACTOR further agree to execute and file a Non-Gratuity Affidavit before final payment under the Agreement is made by GMHA.

D. Ethical Standard. CONTRACTOR represent that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the Guam Memorial Hospital Authority Procurement Rules and Regulations.

SECTION 25 MISCELLANEOUS PROVISIONS

A. General Compliance with Laws. CONTRACTOR shall be required to comply with all Federal and Territorial laws and ordinances. CONTRACTOR shall attach a copy of appropriate business license or a statement of exemption pursuant to Title 11 of the Guam Code Annotated §70126 and §70130.

B. Invalid or Unenforceable Provisions. In the event that any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

SECTION 26 NOTICE

All notices, requests, demands and other communications (collectively, "Notices") or any other communication provided for herein shall be in writing and shall have been deemed to have been duly given if placed in the U.S. mail, certified mail, return receipt requested OR by commercial courier or delivery service which provides a delivery tracking feature, addressed as follows:

ATTN: Lillian Perez-Posadas
Hospital Administrator/CEO
GUAM MEMORIAL HOSPITAL AUTHORITY
ATTN: Materials Management Department
850 Governor Carlos G. Camacho Rd.
Oka Tamuning, Guam 96913-3128

Said notices shall be deemed given on the earlier of (a) actual receipt; or (b) ten (10) business days following the date such notices are deposited in the U.S. Mail, properly addressed and sent via certified mail or placed with a commercial courier or delivery service. If the last day of any notice period falls on a Saturday, Sunday or federal holiday, such notice period shall be extended to the next regular business day. Either party may change the address or designated person for receiving Notices by providing notice to the other party in accordance with this Section.

SECTION 27 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit any information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in this Agreement.

SECTION 28 CHANGES

A. **Change Order.** The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

- (1) changes in the services within the scope of the Agreement; and
- (2) changes in the time for performance of the Agreement that do not alter the scope of the Agreement.

All contract change orders must be approved in writing by the GMHA on a form approved by GMHA to record change orders.

B. **Adjustments of Price or Time for Performance.** GMHA reserves the right to increase or decrease any unit priced quantity as may be deemed reasonable or necessary in order to complete the Services contemplated under this Agreement. If any such change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the services under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Standard Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment shall not excuse a Contractor from proceeding with the Agreement as changed, provided that the government of Guam promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the services, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. All changes must be recorded on a contract change order before they can be included in an application for payment/invoice.

C. **Written Certification.** The Contractor shall not perform any change order in excess of \$5,000 unless it bears, or the Contractor has separately received, a written certification, signed by the Procurement Officer/CEO or other responsible official that funds are available therefor; and, if acting in good faith, the Contractor may rely upon the validity of such certification.

D. **Time Period for Claim.** Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement

Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the government of Guam is prejudiced by the delay in notification.

E. **Claim Barred After Final Payment.** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

F. **Claims Not Barred.** In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the Agreement, if pursued in accordance with the clause entitled Claims Based Upon GMHA's Actions or Omissions or for breach of contract.

SECTION 29 DEFECTIVE COST OR PRICING DATA

A. **Overstated Cost or Pricing Data.** If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or non-current as of the date stated in the certificate, GMHA is entitled to an adjustment of the contract price, including profit or fee or any exclusion of taxes ("Business Privilege Tax," formerly labeled "Gross Receipts Tax") pursuant to 11 GCA § 26203(k)(14) (formerly § 19543.1016) as added by 5 GCA § 5232 of the Guam Procurement Law, to exclude any significant sum by which the price, including profit or fee or any exclusion of taxes ("Business Privilege Tax," formerly labeled "Gross Receipts Tax") pursuant to 11 GCA § 26203(k)(14) (formerly § 19543.1016) as added by 5 GCA § 5232 of the Guam Procurement Law was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by such amount. In establishing that the defective data caused an increase in the contract price, the Procurement Officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

B. **Off-Setting Understated Cost or Pricing Data.** In determining the amount of a downward adjustment, the Contractor shall be entitled to an off-setting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the GMHA's claim for overstated cost or pricing data arising out of the same pricing action.

C. **Dispute.** If the Contractor and the Procurement Officer cannot agree as to the existence of the defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Procurement Officer shall set an amount in accordance with Subsections (f)(1) and (f)(2) of this section and the Contractor may appeal this decision as a contract controversy under Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

SECTION 30 VARIATIONS IN ESTIMATED QUANTITIES

A. Variations Requiring Adjustments. Where the quantity of equipment covered under this Agreement is an estimated quantity and where the actual quantity of such equipment varies more than fifteen percent (15%) above or below the estimated quantity stated in the Contractor's System/Equipment Schedule or this Agreement, an adjustment in the contract price may be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion of the system, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the Agreement or exercise of the option to purchase, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justified.

B. Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

SECTION 31 SUBCONTRACTORS

A. Subcontractor. A subcontractor is a person or entity who has a direct contract with the Contractor or a higher tier subcontractor to perform a portion of the Services set forth in this Agreement.

B. Award of Subcontracts and Other Contracts for Portions of the Services.

1. Unless otherwise stated in this Agreement, the Contractor, as soon as practicable after execution of this Agreement, shall furnish in writing to GMHA the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Services. GMHA may reply within 14 days to the Contractor in writing stating: (1) whether GMHA has reasonable objection to any such proposed person or entity; or (2) that GMHA requires additional time for review. Failure of GMHA to reply within the 14-day period shall constitute notice of no reasonable objection.

2. The Contractor shall not contract with a proposed person or entity to whom GMHA has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

3. The Contractor shall not substitute a subcontractor, person or entity previously selected if GMHA makes reasonable objection to such substitution.

C. Subcontractor Relations. By appropriate written agreement the Contractor shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Contractor by terms of this Agreement, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Contractor, by these Documents, assumes toward GMHA. Each subcontract

agreement shall preserve and protect the rights of GMHA under this Agreement with respect to the Services to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall have full responsibility under this Agreement, the Proposal Documents, conditions, Plans, and Specifications for any subcontracts which the Contractor may let.

D. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Agreement, to include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

SECTION 32

OWNERSHIP OF DOCUMENTS AND WORK MATERIALS

All drawings, specifications, studies, plans, reports, instruments, and other work product, work documents or work materials created by the Contractor in connection with the RFP and Contract shall be the property and shall remain the property of GMHA and may be used by GMHA without any cost.

SECTION 33

ACCESS TO RECORDS AND AUDIT REVIEW

The GMHA must have the right of access to any documents, papers, or other records of the Contractor which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Contractor or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Contractor's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded contractor is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The Contractor agrees to abide by the following access, audit, and inspection terms:

A. **Access to Records and Retention.** The Contractor, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data, and shall make such materials available at all reasonable times after submission of its Proposal, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract or for three (3) years from the date that all other pending matters are closed, whichever is later, for inspection in Guam or at any reasonable location designated by the GMHA unless the Offeror is notified in writing by the GMHA to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.

B. Right to Audit. Contractor shall establish and maintain a reasonable accounting system that enables the GMHA to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The GMHA shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Proposal, the solicitation, or this Agreement, which are kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including bids of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Contractor shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by GMHA whether before, during, or after completion of an awarded contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by GMHA. Such records shall be made available to GMHA during normal business hours at the Contractor's office or place of business without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for GMHA. Contractor shall ensure GMHA has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to GMHA. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by GMHA unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to GMHA, in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the GMHA or the entity that conducted the audit for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the GMHA may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of GMHA findings to Contractor.

C. Right to Enter and Inspect. GMHA may, at any time, without notice, enter and inspect the Contractor's or subcontractor's facilities, place(s) of business, or any place(s) of performance of this Agreement. The GMHA may enter and inspect any plans, supplies, services, equipment, work and records at these locations which are related to the performance of this Agreement, and may conduct any testing deemed necessary to determine whether the Contractor's or subcontractor's compliance or conformity to the solicitation or contract requirements. Guam may enter and audit the cost or pricing data, books, and records of the Contractor or any subcontractor, and/or investigate in connection with an action to debar or suspend a person from consideration

for award of contracts pursuant to § 9102 (Authority to Debar or Suspend) of the Guam Procurement Rules and Regulations.

SECTION 34 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The Contractor and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b).

A. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this Agreement. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

1. The Contractor will work with GMHA and the Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the Agreement.

2. The Contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

B. EEO Officer: The Contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

C. Dissemination of Policy: All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of services and then periodically, at which times the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.

3. All personnel who are engaged in direct recruitment for the Project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minorities and women.

4. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

5. The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

D. Recruitment: When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project workforce would normally be derived.

1. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.

2. In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the Contractor is expected to observe the provisions of that agreement to the extent that the system meets the Contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Federal nondiscrimination provisions.

3. The Contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

E. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

1. The Contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project personnel.

2. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

4. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.

F. Training and Promotion:

1. The Contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

2. Consistent with the Contractor's workforce requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision. *AGENCY* may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

3. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

4. The Contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

G. Unions: If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

1. The Contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
2. The Contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
3. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to GMHA and shall set forth what efforts have been made to obtain such information.
4. In the event the union is unable to provide the Contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Contractor from the requirements of this paragraph. In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, the Contractor shall immediately notify GMHA.

H. Reasonable Accommodation for Applicants/Employees with Disabilities: The Contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

I. Selection of Subcontractors, Procurement of Materials and Leasing of System/Equipment: The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this Agreement.

1. The Contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this Agreement.
2. The Contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

J. Records and Reports: The Contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Contractor for all the Services under this Agreement

and shall be available at reasonable times and places for inspection by authorized representatives of GMHA.

1. The records kept by the Contractor shall document the following:

- a. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- b. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

2. If required, the Contractor and any subcontractors will submit an annual report to GMHA each July for the duration of the Project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the Services under this Agreement. The staffing data should represent the project workforce on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data. The employment data should reflect the workforce on board during all or any part of the last payroll period preceding the end of July.

SECTION 35 NONSEGREGATED FACILITIES

The Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The Contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

SECTION 36 SAFETY: ACCIDENT PREVENTION

A. In the performance of this Agreement the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation, including all pertinent regulations of the Occupational Safety and Health Administration (OSHA). The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in

connection with the performance of the work covered by the Agreement. Contractor alone shall be responsible for the safety, efficiency, and adequacy of its worksite, appliances, and methods, and for any damage which may result from their failure or their improper installation, maintenance, or operation.

B. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this Agreement, that the Contractor and any subcontractor shall not permit any employee, in performance of the Agreement, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 3704).

C. It is a condition of this Agreement that GMHA, the Project Manager or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with safety and health standards.

D. Hazardous Materials.

1. The Contractor is responsible for compliance with any applicable Federal, State, and local laws or requirements regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in this Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Services in the affected area and report the condition to GMHA and the Project Manager in writing.

2. The Contractor shall indemnify GMHA for the cost and expense incurred: (a) for remediation of a material or substance the Contractor brings to the site and negligently handles; or (b) where the Contractor fails to perform its obligations, except to the extent that the cost and expense are due to GMHA's fault or negligence.

E. **Emergencies.** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

**SECTION 37
DRUG FREE WORKPLACE**

A. The Contractor shall, within 30 days after award:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about –

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Provide all employees engaged in performance of the Agreement with a copy of the statement required by paragraph (1) of this clause;

4. Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Agreement, the employee will:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

5. Notify the Procurement Officer in writing within 10 days after receiving notice under subdivision (4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6. Within 30 days after receiving notice under subdivision (4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

7. Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (1) through (6) of this clause.

B. The Contractor, if an individual, agrees by award of this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Agreement.

C. In addition to other remedies available to GMHA, the Contractor's failure to comply with the requirements of paragraph (B) or (C) of this clause may render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

SECTION 38 GUAM DEBARMENT

Contractor warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension, and that it will not employ any subcontractors who have been federally debarred or debarred by the government of Guam.

SECTION 39 SUSPENSION OF SERVICES

A. **Suspension for Convenience.** The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the services for such period of time as may be appropriate for the convenience of GMHA.

B. **Adjustment of Cost.** If the performance of all or any part of the services is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this Agreement, or by the failure of the Procurement Officer to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (b) for which an adjustment is provided for or excluded under any other provision of this Agreement.

C. **Time Restriction on Claim.** No claim under this clause shall be allowed: (a) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and (b) Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Agreement.

D. **Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Agreement.

SECTION 40 COMPLIANCE WITH LAWS

Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

SECTION 41 STATUTORY INTEREST

Interest on amounts ultimately determined to be due to Contractor or the government of Guam or OAG shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

SECTION 42 LICENSES

The Contractor shall be required to obtain all permits and comply with all Federal and Guam laws applicable to its professional licensing and the provision of Services to the Government. The Contractor represents and warrants that it is fully licensed to do business in Guam to render the Services to be provided herein. The Contractor shall provide a copy of all required permits and its current, appropriate business licenses or a statement of exemption pursuant to Title 11 of the Guam Code Annotated §§ 70126 and 70130 within 30 days of the issuance of the NTP.

SECTION 43 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter. This Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

SECTION 44 SEVERABILITY

In the event that any provisions of this Agreement shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

SECTION 45 COMPUTATION OF TIME

Unless specifically stated otherwise, whenever this Agreement, the Contract Documents, or the Proposal Documents provide for a time period of ten (10) days or fewer, weekends and government of Guam holidays are not included in the computation. When this Agreement, the Contract Documents, or the Proposal Documents provide for a time period of more than ten (10) days, weekends and government of Guam holidays are to be included in the computation.

SECTION 46 CONFIDENTIAL INFORMATION

A. **Confidential Information.** Confidential Information means: (a) information the parties or their affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement (including pricing or other proposals), but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, and the terms of this Agreement.

B. Obligations. A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of HIPAA information, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Agreement (including in the case of the parties to detect fraud, to check quality and to operate, maintain and enhance the Services).

C. Exceptions. The restrictions in this Section 5 will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

D. Privacy. Each party is responsible for complying with the privacy laws applicable to the Services.

SECTION 47 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor stipulates that Title 5 GCA Chapter 37, the False Claims and Whistleblower Act applies to this Agreement and to all Contractor's actions pertaining to this Agreement. The False Claims and Whistleblower Act was passed as Public Law 34-116, Chapter III, Section 20 (lapsed into law August 24, 2018) and codified at Title 5 GCA Chapter 37.

SECTION 48 SIGNATURES

This Agreement may be signed by the parties electronically, and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by electronic transmission.

20-0269

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be made effective as of the date first entered above.

MEDHEALTH SOLUTIONS



GLENN HERMES
Managing Partner

Date: 4/20/2021

**GUAM MEMORIAL HOSPITAL
AUTHORITY**




LILLIAN PEREZ-POSADAS, RN, MN
Hospital Administrator/CEO

Date: 4/23/2021

CERTIFIED FUNDS AVAILABLE

Contract Amount: \$ _____

Certified Amount: \$ _____



YUKARI HECHANOVA
GMHA Chief Financial Officer
Guam Memorial Hospital Authority
Cost Center: G/L _____ Account #: 1.08550.02601

Date: 4/22/2021




THERESE OBISPO
Chairman, GMHA Board of Trustees

Date: 042321

Contract amount is
contingent per Section
5 (compensation)
depending on the
collection amount.

APPROVED AS TO LEGALITY AND FORM:




LEEVIN T. CAMACHO, ESQ.
Attorney General of Guam

Date: 5/17/21

GMHA 20-0269

APPROVED:



LOURDES A. LEON GUERRERO
Governor of Guam

Date: 5/13/2021